

Declaration of Emergency and Orders
(*Emergency Management and Civil Protection Act*)

Cabinet Feb 12, 2022	Effective Upon LG signing	Filing Immediate
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PROPOSED CABINET MINUTE

Cabinet agreed that:

1. In light of the ongoing interference with critical infrastructure throughout the province, including essential trade corridors, which is preventing the movement of essential goods and services, the Executive Council approves the Premier's declaration of emergency made on February 11, 2022, pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA).
2. The Ministry of the Solicitor General (SOLGEN) proceed to file an Emergency Order under the EMCPA that:
 - A. Prohibits individuals from:
 - i. preventing someone from travelling to or from critical infrastructure as defined in 2F;
 - ii. preventing the ordinary use of critical infrastructure;
 - iii. causing either of the above to occur, whether directly or indirectly;
 - iv. assisting an individual to knowingly help them do anything above;
 - v. preventing someone from travelling to or from walkways, bridges, and highways (other than 400-series highways, which are already captured as "critical infrastructure"), if doing so would:
 1. prevent the delivery of essential goods or services,
 2. severely disrupt ordinary economic activity, or
 3. seriously interfere with the safety, health or well-being of members of the public.
 - B. Provides police officers and other provincial offences officers the power to do the following when they have reasonable grounds to believe that an individual is not complying with the requirements of 2A:
 - i. Order the individual to stop contravening the emergency order;
 - ii. If there is more than one individual, order the individuals to disperse, or;

- iii. Order the individual to remove any object the individual used to contravene the order (e.g., a motor vehicle), whether the object was put there before or after this emergency order came into effect;
 - iv. Remove the object if the individual refuses to remove the object after being ordered;
- C. Requires individuals to comply with the any of the orders issued by provincial offences officers under 2B.
- D. Provides the Registrar of Motor Vehicles and provincial offences officers the power to order owners or operators of vehicles contravening the order to remove their vehicles, requires them to comply, and permits the removal of the vehicles if they do not comply.
- E. Provides the Registrar and Deputy Registrar of Motor Vehicles the power to make an order suspending or canceling licence plate permits, driver's licences and Commercial Vehicle Operator's Registration (CVOR) Certificates when the Registrar has reasonable grounds to believe that the holder of the permit, licence or certificate has contravened the requirements of 2A, and the following rules apply:
 - i. The individual has no right to be heard before the order is made;
 - ii. The order comes into effect on the day and time set out in the order, even if the individual has not received notice;
 - iii. Notice can be given by any means that the Registrar or Deputy Registrar believes may be reasonable; and
 - iv. The order continues to apply even if there is an appeal or other proceeding relating to it, unless the court or tribunal orders otherwise.
 - v. If the permit for a motor vehicle has been suspended or cancelled, a provincial offences officer can seize any number plates displayed on the motor vehicle, including if they are from another jurisdiction.
- F. Defines critical infrastructure as:
 - i. 400-series highways;
 - ii. airports;
 - iii. canals;
 - iv. hospitals;
 - v. infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications;
 - vi. international and interprovincial bridges and crossings;
 - vii. locations where COVID-19 vaccines are administered;
 - viii. ports;
 - ix. power generation and transmission facilities, and;
 - x. railways.

3. SOLGEN and the Ministry of Transportation (MTO) implement the provisions in the Emergency Order.

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6. SOLGEN, MTO and other partner ministries, as appropriate, work with PO and CO on the development and implementation of an integrated communications strategy.

DECISION SOUGHT AND SUMMARY OF PROPOSAL:

On February 11, 2022, the Premier declared a province-wide emergency pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA) due to the impacts that the “Freedom Convoy” protests are having in Ontario, particularly in Ottawa and the Ambassador Bridge in Windsor. The emergency declaration would address the ongoing interference with critical infrastructure throughout the province, including essential trade corridors, which is preventing the movement of essential goods and services. The declaration of emergency will be in effect for 72 hours unless confirmed by the LGIC through an Order-in-Council.

The Ministry of the Solicitor General (SOLGEN) is seeking approval of an Order-in-Council to approve the Premier’s declaration. In addition, SOLGEN is seeking approval of an Emergency Order under the EMCPA, to protect critical infrastructure, provide additional authority for police and provincial offences officers, and provide additional consideration for the Registrar of motor vehicles to determine potential licence suspension.

Why does Ontario need these changes? Why now?

Under section 7.0.1 of the EMCPA, an emergency can be declared if, in the opinion of the Lieutenant Governor in Council (LGIC) or the Premier, an emergency exists that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property; and one of the following circumstances exists:

- Resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of government such as existing legislation, cannot be relied upon without the risk of serious delay;
- Resources may be insufficiently effective to address the emergency; or
- It is not possible, without the risk of serious delay, to ascertain whether the resources referred to can be relied upon.

Declaring a state of emergency is necessary to protect international border crossings, 400-series highways, airports, ports, bridges and railways. Blockades over the past days and

weeks are impacting supply chains by impeding the movement of goods, people and services. The province has managed the impacts of the protests for the past two weeks by using other measures, such as the court order to freeze the distribution of donations raised for the “Freedom Convoy”. However, many individuals continue to impede access to or egress from the use of critical transportation infrastructure, including essential trade corridors. Additionally, the safety, access to good and services as well as the ability to go to work, has been impacted for many Ontarians, particularly those residing in Ottawa and Windsor.

CABINET OFFICE ANALYSIS

Introduction

Protests in recent weeks began in late January 2022 in response to measures implemented by the Canadian and American federal governments that require truckers crossing the United States border to be fully vaccinated. The messaging of protestors evolved to include protests against COVID-19 public health measures more broadly. Demonstrations and blockades have been ongoing in the City of Ottawa, and this past week, crowds of trucks have become stationed in Windsor, near the Ambassador Bridge crossing, preventing the flow of traffic in both directions. The Ambassador Bridge is one of North America’s busiest international commercial border crossings, with an estimated \$700 million of two-way trade every single day. The blockade at the border crossing is impacting the auto industry, as some nearby auto plants in Windsor and Detroit have had to cancel assembly shifts.

Emergency Declaration

The declaration is made on grounds that the interference with transportation infrastructure and other critical infrastructure, including essential trade corridors, that is currently occurring in locations throughout the province and preventing the movement of people and the delivery of essential goods and services, constitutes a danger of major proportions that could result in serious harm to persons and substantial damage to property.

Within this context, critical infrastructure is defined as including 400 series highways, railways, canals, ports, international and interprovincial bridges and crossings, airports, power generation and transmission facilities, infrastructure for the supply of utilities, hospitals and other healthcare facilities, and locations where COVID-19 vaccines are administered.

Proposed Emergency Orders

In order to implement the measures necessary to respond to the emergency, an emergency order pursuant to s. 7.0.2 (4) of the EMCPA is being proposed. The order will include the following key elements:

- **Critical Infrastructure** – prohibiting any person, whether through the use of a motor vehicle or other means, from impeding access to or egress from, or the ordinary use, of critical infrastructure. In addition, prohibiting any person from aiding another person in the obstruction of critical infrastructure, including by providing

supplies, fuel or other materials. This order would also prohibit any person from obstructing access to or egress from, or the ordinary use of any highway, walkway or bridge, where it prevents delivery of essential goods or services, disrupts economic activity, or interferes with the safety, health or well-being of the public.

- **Authority Provincial Offences Officers (including Police)** – similar to the enforcement of COVID-19 measures, the order would be enforced by a police officer or provincial offences officer. A police officer or other provincial offences officer who has reasonable grounds to believe that one or more individuals are in contravention of the provisions may order the individuals to leave. A police officer or other provincial offences officer would also be able to require a vehicle owner or CVOR operator to remove a vehicle that is being used to contravene the Emergency Order.
- **Provincial Offences Officers or the Registrar of Motor Vehicles** – could order owners or operators of vehicles contravening the order to remove their vehicles and permit the removal of the vehicle if they don't comply.
- **Considerations for the Registrar of Motor Vehicles** – providing the Registrar of Motor Vehicles under the *Highway Traffic Act* (HTA) with the additional consideration of violation of the emergency order as a factor in determining if applicable licences and registrations shall be suspended or revoked. This would give the Registrar authority to suspend or cancel the plate portion of a permit, a driver's licence or a Commercial Vehicle Operator Registration (CVOR) certificate if there are reasonable grounds to believe that the individual or vehicle will obstruct access of egress.

Enforcement of New Measures

While SOLGEN does not direct police service operations or instruct them on the application of police powers, information about emergency measures, and new authorities, as well as associated penalties related to any new orders will be shared with all police services. Ongoing communication and updated resources will be available to assist law enforcement to effectively and consistently apply enforcement tools to enforce the new measures. New measures will be communicated to law enforcement personnel through All Chiefs Memoranda.

Implementation of Registrar's Authority to Suspend Licences

The All Chiefs Memoranda will also provide information on the Registrar's authority to suspend or cancel the plate portion of a permit, a driver's license or a CVOR certificate including a police officer or provincial offence officer's role in completing and submitting a customized digital form to support the Registrar's authority.

Once the Registrar has been provided notice of a violation of the order by police, they will review the case and authority granted by the order to suspend and/or revoke the driver's licence, licence plate, or CVOR registration associated with any person acting in contravention of the Emergency Order, or any vehicle being used to commit a contravention. Violation of the Emergency Order would form the basis for a suspension or revocation of a licence, registration, or CVOR. Once a suspension has been issued, it will

be uploaded to Canadian Police Information Centre overnight, where it will be viewable on the next business day.

Critical information will also be shared with key partner enforcement ministries including the Ministry of Labour, Training and Skills Development and the Ministry of Municipal Affairs and Housing. The ministry's dedicated Enforcement Support Line and email resource will also make information available to all provincial offences officers, including but not limited to police services.

Delivery and Communications

Delivery

If approved, the orders would take effect immediately upon Lieutenant Governor signature.

Communications

If approved, the emergency declaration would come into effect immediately on signing, with orders coming into effect upon filing.

An emergency declaration order made by the LGIC would terminate after 14 days at which point the LGIC could order one 14-day extension. Following the initial 28-day period, further extensions of up to 28 days at a time could only be made by the Legislative Assembly on the recommendation of the Premier.

The proposed emergency declaration and emergency orders was announced via a Premier's podium on February 11, 2022. The orders will be communicated directly to media through the Premier's Office. The ministry will also update [Ontario.ca/alert](https://ontario.ca/alert) accordingly.

Key Message

Public safety is a top priority of this government. It is critical the government continues to take the steps necessary to protect the economy, critical infrastructure, border crossings, streets and highways from disruption. Measures and restrictions will be enforced, and fines levied.

Risks

Civil Liberties Organizations Concerns

There will likely be a concern that the government is denying the right to freedom of speech as well as freedom to protest. Communication with the public would include messaging that the orders are not intended to stop peaceful protests or freedom of speech, but rather to stop the blockade to transportation and critical infrastructure, as well as protect the safety of Ontarians.

Potential for Other Protests

There is a risk that there could be other protests happening across the province, including those involving First Nations/Indigenous groups, and this order may create an unintended

consequence of enforcing against those other protests. Since the government does not direct law enforcement, the order may result in enforcement of order violations that do not involve the “Freedom Convoy”.

Public Reaction

There is likely to be a mixed public reaction as some individuals who support the protestors will oppose the government’s use of an emergency declaration with associated orders designed to end the protest. However, others would likely respond positively to the government taking action to end the protests in order to restore order, protect Ontarians, and allow goods to move across the border supporting the economy.

Individuals Whose Licence Becomes Suspended

Given the speed at which licence suspensions could take place, there is a risk that an individual whose license becomes suspended might not know precisely when suspension takes place. Enforcement personnel may be perceived not to be compliant with their responsibilities if they allow individuals with a suspended licence to drive away when their licence has been suspended. It will be important to ensure that an individual is not prevented from driving their vehicle away from the scene, and that they do not drive inadvertently without a valid licence. At the same time, there are online tools that an individual can use to find out the status of their licence. It is a defence to a charge of driving under suspension that the driver did not know about the suspension.

Enforcement Capacity

There is a risk that due to competing local public safety priorities and increased calls for services, local police services may have limited capacity to mobilize a local enforcement response, redeploy or share resources across communities. In the face of constrained resources and the requirements of new measures, police services may react negatively to any administratively burdensome solution that draws police resources away from the front lines, if they are required to adopt new processes to support MTO in the suspension or revocation of licences for private and/or commercial vehicles. Depending on the take-up of appeal provisions, additional downstream administrative impacts may also apply. MTO is proposing to use a single electronic form to request an order from the registrar which should limit this risk.

Mistaken Suspension of Licences

There is also a risk that due to the likely chaotic situations found at blockades, it may be difficult to fully ascertain the people who drove vehicles to a blockade and the degree to which vehicle owners authorized their property to be used in a blockade. As a result, it is possible that licence suspensions under the Emergency Order may affect licences or certificates related to persons who were not primary participants in a blockade. Under a normal suspension that only applies after an appeal or appeal period has been exhausted, the culpability of a person would be determined through those appeal processes. With an immediate suspension with no right of appeal, there is greater risk of error. The risks associated with these scenarios may be reduced if the suspension periods are of a short duration, and if the Registrar limits their actions to suspensions rather than cancellations, which are either long-term or permanent in nature.

Other Considerations

Enforcement

Since the government's authority is to make laws from the province, and does not direct the police, it is at the discretion of the police to exercise the powers granted under the emergency orders. The emergency order enables the Registrar to consider a contravention of the order as a reason to suspend and/or revoke a licence, CVOR or plate poses operational challenges. Traditional methods of notice of revocation (e.g., mail) will not provide the required immediacy, and therefore, police and provincial offences officers will be enabled to serve those participating in interferences/blockades/occupations. However, the ability of the Registrar to observe a contravention of the emergency order, communicate to police or provincial offences officers, and have officers print and serve the notice of suspension or revocation will complicate enforcement action.

Implementation/Timing

While the emergency declaration and the corresponding orders provide measures to manage the protests, the measures would not be undertaken instantaneously. For example, it would take more than 24 hours for a notice of licence suspension or revocation to be served, license suspension would not take place immediately. The order made comes into effect on the date and at the time that is set out in the order, whether or not the person affected has received notice. However, there are online tools that an individual can use to find out the status of their licence.